

The issue for the Board's review is: Is the heart catheterization procedure ordered by the ALJ compensable under the Kansas Workers Compensation Act pursuant to K.S.A. 2010 Supp. 44-501(e)?

PRINCIPLES OF LAW AND ANALYSIS

The Board's jurisdiction to review a preliminary hearing order is limited. K.S.A. 2010 Supp. 44-551(i)(2)(A) states in part:

If an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing.

K.S.A. 44-534a grants authority to an Administrative Law Judge to decide issues concerning the furnishing of medical treatment, the payment of medical compensation and the payment of temporary total disability compensation. K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an administrative law judge if it is alleged the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested.¹

In *Allen*,² the Kansas Court of Appeals stated:

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and

¹ See K.S.A. 44-551.

² *Allen v. Craig*, 1 Kan. App. 2d 301, 303-04, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.

K.S.A. 2010 Supp. 44-510h(a) states:

It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515 and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

In a similar case, the Board held that it had no jurisdiction to hear an appeal where an ALJ refused to order a heart catheterization.³ In another case, the Board found that it had no jurisdiction to hear an appeal where the ALJ ordered the respondent to pay for a cardiac work-up and new pacemaker that was required before the physician would perform neck surgery.⁴

Based upon the foregoing, this Board Member concludes the Board does not have jurisdiction over the issue of whether the ALJ correctly ordered respondent to pay for claimant's heart catheterization procedure. When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.⁵

ORDER

WHEREFORE, it is the finding, decision and order of this Board Member that respondent's appeal from the Order of Administrative Law Judge John D. Clark dated January 31, 2013, is dismissed.

IT IS SO ORDERED.

³ *Burnett v. Wal-Mart*, Docket No. 223,942, 2000 WL 137175 (Kan. WCAB Jan. 12, 2000).

⁴ *Horner v. U.S.D.* 259, Docket Nos. 1,033,054; 1,033,055; 1,033,057 and 1,033,058, 2009 WL 5385881 (Kan. WCAB Dec. 17, 2009).

⁵ See *State v. Rios*, 19 Kan. App. 2d 350, Syl. ¶ 1, 869 P.2d 755 (1994).

Dated this _____ day of April, 2013.

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John D. Clark, Administrative Law Judge